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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,326	08/30/2001	Martin Gleave	UBC.P-020-2	2324

21121 7590 05/25/2005

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EXAMINER	
VIVLEMORE, TRACY ANN	

ART UNIT	PAPER NUMBER
1635	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/944,326	Applicant(s) GLEAVE ET AL.	
	Examiner Tracy Vivlemore	Art Unit 1635	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *29 April 2005*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): the provisional obviousness-type double patenting rejection.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is ~~(or will be)~~ as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: *3,12-16,24 and 25*.
   Claim(s) rejected: *1,6-8,22,23 and 27*.
   Claim(s) withdrawn from consideration: *4, 5, 17, 18 and 21*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 4/15/04 and 3/21/05
13. ☐ Other: _____.

ANDREW WANG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

TV
May 16, 2005

5-0-0-

With regard to Applicant's arguments regarding the Sensibar et al. reference, Sensibar et al. disclose the use of Lipofectin to transfect cells with a plasmid in order to overexpress the SGP-2 protein. Sensibar et al. do not disclose that Lipofectin is used as a carrier to administer antisense oligonucleotides.

Applicant states that the Examiner's citation of the '148 patent does not contradict Applicant's prior statement that Lipofectin is unsuitable for human treatment. However, this citation does contradict Applicant's statement; the '148 patent recites Lipofectin as an agent that enhances cellular uptake and specifically states that such agents can be added to the pharmaceutical compositions of the invention. The patent further states that such compositions are intended to be administered to humans. US patents are presumed to be valid.

The information disclosure statement filed April 15, 2004 has been considered and is enclosed with this Action. The Examiner regrets any inconvenience its omission from the previous Action may have caused. Applicant requests the finality of the previous Office Action be withdrawn in order for this IDS to be considered and states this is consistent with the collection of a fee. Withdrawal of finality is not required for consideration of an IDS or because a fee has been collected.

The information disclosure statement filed March 21, 2005 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

Applicant's arguments have overcome the provisional obviousness-type double patenting rejection. However, the restriction requirement is not withdrawn because linking claims 1, 2, 6-8, 23 and 27 are not allowable.

The claims submitted on April 29, 2005 will be entered; however, it is noted that this claim set provides no amendments and merely corrects the status of claims improperly identified in the previously submitted claims.